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SUBJECT: INTRODUCING THE EU IV: THE JUDICIAL, FINANCIAL, SUPERVISORY
AND ADVISORY BODIES

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SUMMARY AND INTRODUCTION

1. In addition to its core policy and law-making institutions (the Commission, Council and European Council, and European Parliament - see REFs B and C), the EU institutional system also includes several other bodies with judicial, monetary, financial, supervisory or advisory functions. Among these institutions, which ensure a smooth functioning of the EU apparatus, are:

-- The Court of Justice of the European Communities, the supreme judicial institution of the EU. The Court, usually referred to as the European Court of Justice (ECJ), is assisted by its junior tribunal, the Court of First Instance (CFI), and a Civil Service Tribunal. Its basic role is to ensure that EU law is interpreted and applied uniformly throughout the EU and in conformity with the treaties;

-- The European Central Bank (ECB), the monetary authority of the euro area covering the EU countries that have adopted the single currency;

-- The European Investment Bank (EIB), a major source of financing for economic development in EU and non-EU countries;

-- The European Court of Auditors, the watchdog of EU finances;

-- The European Economic and Social Committee (EESC), an advisory body and forum for civil society (labor, employers, and various interests), and the Committee of the Regions (CoR) advising on EU policies pertaining to regional interests.

2. This message - the fourth in a series updating our previous EU 101 cables - is meant to help officers in positions requiring a good knowledge and understanding of the EU machinery. Other cables in this series discuss the history of the European Union (REF. A); the chief political institutions (Commission, Council and Parliament - REF. B); the Presidency and the European Council (REF. C); the EU pillar structure and decision-making procedures; the enlargement process; and EU-U.S. cooperation under the Transatlantic dialogue. End Summary and Introduction.

THE COURT OF JUSTICE AND ITS JUNIOR TRIBUNALS

3. Based in Luxembourg, the Court of Justice of the European Communities, usually called the European Court of Justice (ECJ), is the supreme judicial authority of the EU apparatus. It should not be confused with the International Court of Justice in The Hague or the European Court for Human Rights in Strasbourg, both of which are not directly part of the EU institutional system. (Note: If the Treaty of Lisbon is implemented, the EU as such [which would acquire a legal personality] will be able to accede to the European Convention for the Protection of Human Rights. This would help solve potential problems of conflicting case law between EU and Council of Europe institutions.)

4. The ECJ's basic role is to ensure that EU legislation (the primary law of the Treaties and secondary legislation set forth by the institutions) is interpreted and applied uniformly throughout the EU. The various types of proceedings include ruling on actions for failure to fulfill obligations, actions for annulment and failure to act, references for a preliminary ruling, appeals and reviews. EC case law establishes that the Community must respect international law in the exercise of its powers. However, recent court rulings against the EU on enforcement of UN anti-terrorism sanctions have raised questions about the Court's views on how the EU gives effect to Security Council Resolutions under Chapter VII of the Charter of the United Nations.

5. The Court mostly rules in disputes between Community institutions (e.g., Council and Commission), the institutions and individual Member States, and between Member States. The Court is assisted by and acts as a court of appeals on points of law from its junior tribunal, the Court of First Instance (CFI), which was established in 1989 to relieve the Court of its increasing workload. (Note: The Court does not have the right to decline to hear a case. End note.) The CFI usually hears actions brought by Member States against the Commission and against certain Council acts as well as actions referred by natural or legal persons against decisions of the EU bodies. The CFI may annul a Community act or award compensation for damage. There is also a Civil Service Tribunal that has first instance jurisdiction on disputes between the EU bodies and their employees (pay, career progress, disciplinary measures, social security, etc.). Together, the three courts form the judicial institution of the Community.

6. Other EU bodies and the Member States may seek rulings from the

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Court and sue each other in the ECJ for alleged failures under the treaties and secondary legislation. This most commonly occurs when the Commission, acting as "Guardian of the Treaties," files a case

against a Member State for failure to correctly implement a piece of Community law (after warning the Member State concerned). Any natural or legal person may file a challenge appealing a Decision by a Community body or any piece of legislation that is of "direct and specific concern" within a certain time frame. The Decision or the piece of legislation may be annulled, e.g. where there is a lack of competence, an invalid legal basis, a breach of procedural requirements, or a misuse of power.

17. Through its case law, the ECJ has identified an obligation on administrations and national courts to apply Community law in full within their sphere of competence and to protect the rights conferred on citizens by that law (direct application of Community law). In cases of conflict, the Community law takes precedence over national laws and the national authorities have an obligation to repeal the conflicting national provision. The ECJ has played a key role in the structure of the single market and has contributed to creating a legal environment for EU citizens by protecting the rights conferred upon them under the Community legislation. Some judgments by the Court have major repercussions for the daily life of EU citizens; e.g., in the fields of free movement of persons, freedom to provide services, and social rights.

18. Parties fined by the Commission in competition (antitrust) cases (e.g., companies participating in a cartel) or antidumping procedures may appeal those decisions to the Court. Any alleged breach of Community law by a Member State may be brought before the Court, and where a judgment finding such infringement is not complied with, the Court has the power to order the payment by the country concerned of a lump sum or a periodic penalty. (There have been only a few occasions of non-compliance and such fines.)

19. Member State courts may, and sometimes must, make a "preliminary reference" to the ECJ and ask it to clarify an interpretation of the treaties or other Community law to ascertain whether their national legislation complies with that law. A reference for a preliminary ruling may also challenge the validity of any act of Community law. The ECJ then rules on the law; i.e., declares what the relevant Community law is. The national court to which the ruling is addressed must comply with the interpretation by the ECJ in deciding the dispute before it. The judgment likewise binds national courts in all Member States facing the same problem. Requests for preliminary rulings have served to establish major principles of Community law. A famous 1979 ECJ decision, *Cassis de Dijon*, set the principle of "mutual recognition," based on the ruling that "there is no valid reason why, provided that they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State."

110. The ECJ is currently (beginning of 2000) composed of 27 Judges, one from each Member State, and eight Advocates General, all appointed for renewable six-year terms by agreement of the EU governments. The Judges and Advocates General are selected from "persons whose independence is beyond doubt" and "who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are judicial experts of recognized competence." The Judges select their President from amongst their ranks for a renewable three-year term. The President directs the Court's work and presides at hearings and deliberations. The current ECJ President is the Greek Vassilios Skouris. The Advocates General assist the Court in impartially reviewing the case material and presenting an "opinion" that the Court is not bound to follow but that may be used as the basis for its later ruling. The Court may sit as a full Court (27 judges) in exceptional matters specified by the underlying Treaty, in a Grand Chamber (13 judges) when an EU institution or Member State is a party or the case is of special significance or complexity, or, most frequently, in smaller Chambers (3 to 5 judges).

111. The CFI is also composed of 27 Judges (one per Member State) appointed for renewable six-year terms; however, there are no permanent Advocates General in the CFI, where the duties of Advocate General are occasionally performed by one of the Judges. With the Nice Treaty (in force since 2003), the CFI became the common law judge for all direct actions (proceedings against EU decisions, action for failure to act, action for compensation), with the exception of those attributed to a specialized chamber and those reserved by the statute to the ECJ. The Nice Treaty introduced greater flexibility in the allocation of responsibilities between the ECJ and the CFI by allowing future adjustments to be made through the Court's statute and decisions by the Council. As a matter of principle, the ECJ retains competence for failure to fulfill obligations and for questions referred to the EU judicial system for a preliminary ruling.

112. Despite clear differences between the EU and U.S. judicial systems, some observers may be tempted to analogize the ECJ to the Supreme Court and the CFI to our Courts of Appeal. The ECJ was originally designed on the French model, in which a case proceeds in

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a closed format on written papers and where only oral arguments and judgments are public.

THE EUROPEAN CENTRAL BANK

113. The Frankfurt-based European Central Bank (ECB) was established on July 1, 1998, with the Dutchman Wim Duisenberg as its first President. The ECB took over from the European Monetary Institute as the final institution needed for completion of the European and Monetary Union (EMU), and presided over the launch of the Euro on January 1, 1999. The ECB, which was designed on the model of the German Bundesbank, has the exclusive right to set interest rates and to issue euro banknotes for the euro area (the sixteen EU countries, with 325 million people -- so far -- that have adopted the euro; see REF. A). The primary objective of the ECB's monetary policy is to maintain price stability. The ECB aims at inflation rates of below, but close to, 2.0 percent over the medium term. Its operational independence is enshrined in the Treaty and is second to none, making it one of the most powerful EU institutions. The ECB just celebrated the 10th anniversary of its creation and the launch of the Euro, pointing to its success in maintaining average Eurozone inflation of just over 2.0 percent for 10 years, despite numerous global economic shocks and crises.

¶14. The current ECB President is the Frenchman Jean-Claude Trichet. The President is assisted by a Vice-President (the Greek Lucas Papademos) and four other members of the Executive Board nominated by the EU leaders. By a "tacit understanding" of governments, four of these six seats are currently reserved for the biggest central banks/countries of the Euro zone (France, Germany, Italy and Spain). The ECB Presidency is conferred for eight years but the EU leaders agreed to stagger the terms of the Executive Board members. Duisenberg's appointment in 1998, however, was based on a backroom arrangement among leaders, under which the Dutchman would not serve his full term and retire shortly after the introduction of the euro notes and coins (beginning of 2002) to leave room for a Frenchman who would serve a full eight-year term. Duisenberg refused for some time to recognize the validity of the "political agreement" but eventually resigned in July, 2003, making room for Trichet, a former Treasury Director and head of the French Central Bank. Just like for all words uttered by the chairman of the U.S. Federal Reserve Bank, all pronouncements by the ECB President, including his press conferences and regular testimonies before the European Parliament, are carefully monitored by market operators worldwide, especially for hints of changes in interest rates.

¶15. The ECB together with the national central banks (NCBs) of all EU Member States -- whether they have adopted the euro or not -- constitute the European System of Central Banks (ESCB). The "Eurosystem" is the more restrictive term used to refer to the ECB and the NCBs of the Member States that have adopted the euro as a single currency. The "Eurosystem" and the ESCB will co-exist as long as there are EU Member States outside the euro area. The basic tasks to be carried out by the "Eurosystem" are to define and implement the monetary policy of the euro area, to conduct day-to-day operations in the international currency markets, to hold and manage the official foreign exchange reserves of Member States, and to promote the "smooth operation" of payment systems in the euro area. The national banks of the Member States that do not participate in the euro therefore do not take part in decision-making concerning the single monetary policy of the euro area.

¶16. The decision-making bodies of the ESCB are:

-- The six-member Executive Board, essentially the directorate of the ECB. The Board prepares the meetings of the Governing Council, implements monetary policy in accordance with the guidelines laid down by the Governing Council and, in doing so, instructs the NCBs.

-- The Governing Council, made up of the Executive Board of the ECB plus the governors of the central banks of the countries that have adopted the euro. The Governing Council formulates the monetary policy of the euro area, including the setting of key interest rates and the money supply of reserves in the "Eurosystem," with the primary objective of maintaining price stability in the area.

-- The General Council, made up of the Governing Council members plus the Central Bank Governors of the non-euro area countries of the EU, which performs functions concerning all participants in EMU, such as the collection of statistical information, the establishment of rules for standardizing the accounting and reporting of operations undertaken by the NCBs, the preparation of the ECB's annual reports, etc.

¶17. Without undermining the primary objective of supporting price stability, the ESCB must support the "general economic policies" of the EU and its Member States, as defined in the Treaty. Tensions occasionally surface in this respect between the ECB and some EU governments, in particular with members of the "EUROGROUP" panel of Finance Ministers of the euro area. The Treaty provides that all EU

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Member States (not just participants in the euro area) must regard their economic policies as "a matter of common interest." Several coordination instruments have been put in place, including:

-- The Broad Economic Policy Guidelines (BEPG), designed as a reference tool for the EU and its individual governments in the conduct of economic policy.

-- The Economic and Monetary Union (EMU) Stability and Growth Pact (SGP) adopted by EU leaders in 1997, which details standards and timetables for ensuring a sound management of budgetary policies. As reformed in March 2005, the Pact still requires Member States to keep their public deficits under 3.0 percent of GDP and their public debts under 60 percent of GDP. However, the Pact's rules have been made more flexible across a range of areas such as conditions for avoiding an "excessive deficit procedure."

-- The "excessive deficits procedure," involving provisions for the prevention and correction of budget imbalances with possible reprimands and sanctions imposed on Member States.

¶18. The above framework created challenges of coordination among the EU countries and between the governments and the ECB. Each euro member country had to bring its own fiscal policy in line with these standards. The governments also had to accept a common monetary policy, independently conducted by the ECB. They agreed to macroeconomic surveillance by holding exploratory discussions on national budget plans and major economic policy initiatives liable to have a significant impact on the policy mix of the euro area or the economy of other member countries. The ECB leadership and the EU Finance ministers hold regular contacts but the issue of policy coordination remains a matter of debate in the current global financial and economic turmoil. Under Trichet's leadership, however, the ECB remains faithful to its Treaty goals and anxious to demonstrate its independence and expertise to the markets.

¶19. The ECB has been criticized for overly cautious moves on interest rates in response to the global financial crisis. It has, however, acted during the crisis to promote new coordination mechanisms and proposals. In April, 2008, the ECB helped reach agreement on a new EU-wide memorandum of understanding on cooperation between supervisory authorities, central banks and finance ministries in crisis situations. The ECB coordinated interest rate cuts later in 2008 with the U.S. Federal Reserve and other major central banks. In January, 2009, ECB Vice President

Papademos proposed that the ECB, together with national central banks in the Eurozone, become the supervisory authority for major cross-border banking groups. The European Commission, however, retains sole rights to propose EU financial regulation, and has yet to comment on the Papademos proposal.

EUROPEAN INVESTMENT BANK/EUROPEAN INVESTMENT FUND

120. The Luxembourg-based European Investment Bank (EIB) is the EU's financing institution. The EIB should not be confused with the European Bank for Reconstruction and Development (EBRD), of which the U.S. is a member and which is not an EU institution. The EIB's task is to further the EU's objectives by making long-term financing available for specific capital projects. The EIB raises substantial funds on the capital markets which it lends on favorable terms to projects furthering EU policy objectives. The Bank continuously adapts its activity to developments in EU policies (e.g., the EU's response to the current economic slowdown). The EIB enjoys its own legal personality and financial autonomy within the EU. It operates in keeping with strict banking practices and in close cooperation with the wider banking community, both when borrowing on the capital markets and when financing projects. The EIB's shareholders are the EU Member States, and its Board of Governors is composed of the EU Finance Ministers. The current EIB President is the former Belgian Finance Minister Philippe Maystadt.

121. The bank contributes to a closer-knit Europe, particularly in terms of economic integration and greater economic and social cohesion; e.g., by fostering the development of less-advanced regions or improving transport and telecommunications infrastructures. The bulk of lending goes to intra-EU projects. The EIB offers various financing facilities, depending on eligibility and product category, such as loans for small and medium-sized enterprises, venture capital, direct loans, etc. Outside the EU, the EIB is used to implement the financial protocols of agreements concluded by the EU with third countries, including EU candidates, countries of the Western Balkans, Ukraine, EUROMED partners, African, Caribbean and Pacific countries, as well as Asian and Latin American countries.

122. The European Investment Fund (EIF) is the EU's specialized financial institution for small or medium-sized enterprises, SMEs). The EIF makes venture capital investments with a view to supporting the emergence of a performing and homogenous European venture capital market and facilitating SME access to debt finance. EIF's shareholders are the EIB, the EU represented by the Commission, and

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a number of European banks and financial institutions from the public and private sector. The EIF carries out its venture capital and guarantee activities using either its own funds or funds entrusted by mandates. The EIF acts independently and, uniquely for a body of the EU system, acts commercially under market conditions, with a statutory obligation to target appropriate returns for its shareholders.

THE EU COURT OF AUDITORS

123. Similar to the U.S. General Accountability Office in function, the Luxembourg-based Court of Auditors is responsible for the audit of EU finances. It contributes to improving EU financial management and acts as the independent guardian of the financial interests of the EU. The institution was established in the 1970s, after Member States began transferring part of their national VAT receipts to the EU. The 27-member Court of Auditors (one member per Member State) has a staff of several hundreds and extensive powers to examine the legality and regularity of receipts and expenditure of EU finances. The President (currently the Portuguese Vtor Manuel da Silva Caldeira) supervises the performance of the Court's work and ensures liaison with the other EU bodies. The Court's annual reports are a source of pressure on bodies with administrative responsibility and sometimes uncover cases of corruption in EU governments and institutions. They provide a basis for the annual budgetary discharge procedure involving the European Parliament and Council.

124. In order to strengthen the means of preventing and combating fraud and other illegal activities at the expense of the financial and economic interests of the Community and the EU budget, the Commission established within itself in 1999 the European Anti-Fraud Office (OLAF), which was given responsibility for conducting administrative anti-fraud investigations. While it has an individual independent status for the investigative function, OLAF is also part of the Commission, currently under the responsibility of Vice-President Siim Kallas in charge of Administrative Affairs, Audit and Anti-Fraud.

EUROPEAN OMBUDSMAN

125. The European Ombudsman (currently the Greek Nikiforos Diamandouros) investigates complaints about maladministration in the EU institutions and bodies. Any EU citizen or resident in a Member State can file a complaint to the Ombudsman. Businesses, associations or other bodies with a registered office in the EU may also complain. Elected by the European Parliament, the Ombudsman is completely independent and impartial and can also launch inquiries on his own initiative. The Ombudsman may simply need to inform the institution concerned about a complaint for it to resolve the problem. If the case is not solved satisfactorily, the Ombudsman tries to find a friendly solution that puts right the case of maladministration and satisfies the complainant. If the attempt at conciliation fails, the Ombudsman can make recommendations to solve the case. If the institution does not accept his recommendations, he can report the case to the European Parliament.

EUROPEAN DATA PROTECTION SUPERVISOR

126. The European Data Protection Supervisor (currently the Dutchman Peter Hustinx) and his Assistant constitute an independent supervisory authority appointed by the EU Council and European Parliament to protect personal data and privacy and to promote good practice in the EU institutions and bodies. They do so by

monitoring the administration's processing of personal data, advising on policies and legislation that affect privacy, and cooperating with similar authorities to ensure consistency in personal data protection. Hustinx was just reappointed by the Council and Parliament to another five-year term.

THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

127. The European Economic and Social Committee (EESC) is a non-political, consultative body offering economic and social components of the EU civil society a platform to voice their views on EU issues. Its members (currently numbering 334) are divided into three groups representing employers, workers, and other interests such as farming, commerce, transport, crafts, consumers, and SMEs. Their basic task is to produce opinions of interest to the Commission, Council and European Parliament in economic and social sector-related areas, including agriculture, the single market, transport, social policy, and the environment. In some areas, consultation of the EESC is mandatory; in other cases it is optional. The EESC may also issue opinions on its own initiative. Its opinions (about 170 a year) bear no legal value in the Community decision-making process. The EESC, currently chaired by the Italian Mario Sepi, also acts as a forum for the single market and has been trying to gain more visibility by hosting events aimed at bringing the EU closer to the people.

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THE COMMITTEE OF THE REGIONS

128. The Committee of the Regions (CoR) was established under the Maastricht Treaty as another consultative body to advise the Commission, Council and Parliament on EU policies or matters involving specific regional interests such as education, public health, the EU structural funds or the trans-European transport, telecommunications and energy networks. The CoR currently has 334 members, all elected members or key players in the local or regional authorities of their home region. The CoR holds five plenary sessions a year to adopt its opinions and resolutions on topical political issues. Its current President is the Belgian Luc Van den Brande.

EU AGENCIES

129. A series of decentralized agencies have been established to assist the Community ("first pillar") in the formulation and evaluation of its policies. Those agencies, which are distinct from the EU institutions (Council, Parliament, Commission, etc.) are normally set up by an act of secondary legislation to accomplish a specific technical, scientific or managerial task. The following are currently meeting that definition, even though differing terms are used to designate them:

- The Community Fisheries Control Agency (located in Vigo, Spain);
- The Community Plant Variety Office (Angers, France);
- The European Agency for Reconstruction (assistance to Western Balkans, Thessaloniki, Greece);
- The European Agency for Safety and Health at Work (Bilbao, Spain)
- The European Agency for the Management of Operational Cooperation at the EU External Borders (FRONTEX, Warsaw, Poland);
- The European Aviation Safety Agency (Cologne, Germany);
- The European Center for Disease Prevention and Control (Solna, Sweden);
- The European Center for the Development of Vocational Training (Thessaloniki, Greece);
- The European Chemicals Agency (Helsinki, Finland);
- The European Environment Agency (Copenhagen, Denmark);
- The European Food Safety Authority (Parma, Italy);
- The European Foundation for the Improvement of Living and Working Conditions (Dublin, Ireland);
- The European Fundamental Rights Agency (Vienna, Austria);
- The European GNSS (Global Navigation Satellite Systems) Supervisory Authority (Brussels, Belgium);
- The European Institute for Gender Equality (under preparation);
- The European Undertaking for ITER and the Development of Fusion Energy (Barcelona, Spain);
- The European Maritime Safety Agency (Lisbon, Portugal);
- The European Medicines Agency (London, UK);
- The European Monitoring Center for Drugs and Drug Addiction (Lisbon, Portugal)
- The European Network and Information Security Agency (Heraklion, Greece)
- The European Railway Agency (Valenciennes, France);

-The European Training Foundation (Torino, Italy);

-The office for Harmonization in the Internal Market
(Trade Marks and Designs, Alicante, Spain);

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-The Translation Center for the Bodies of the EU
(Luxembourg).

¶30. Some agencies have also been set up to carry out specific technical, scientific and management tasks within the framework of the Common Foreign and Security Policy (CFSP - the EU's "second pillar"):

-The European Defense Agency (EDA): to support the Member States and Council in improving European defense capabilities and to sustain and develop the European Security and Defense Policy (Brussels);

-The European Union Satellite Center (formerly a WEU Agency, Torrejon, Spain);

-The European Institute for Strategic Studies
(Paris).

¶31. Other agencies assist the Member States in their cooperation in the fight against terrorism and organized crime ("third pillar"):

-CEPOL: European College bringing together senior police officers to encourage cross-border cooperation (located in Hampshire, UK);

-EUROPOL, the European Police Office, collecting and providing analysis of Europe-wide criminal intelligence (located in The Hague, Netherlands);

-EUROJUST, European body for the enhancement of judicial cooperation and coordination (EU Prosecutors Office, The Hague).

COMMENT

¶32. The strength and independence of the many "non-political" EU institutions, especially the ECJ and ECB, should not be underestimated. Some critics of the ECJ perceive it as power-grabbing and lacking legitimacy, while the ECB has been blamed for its excessive focus on monetary stability (which is in line with its Treaty-enshrined mandate). EU Member States might occasionally grumble at the terms dictated by these institutions, but in practice they respect their crucial role in EU governance.

MURRAY